

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 104 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE R.BALIA.

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

PADMABEN RASIKLAL MEHTA

Versus

STATE OF GUJARAT

Appearance:

MR AJ PATEL	for Petitioner
MR.DC DAVE	for Respondent No.1
MR CB KAUSHAL	for Respondent No. 2, 3

CORAM : MR.JUSTICE R.BALIA.

Date of decision: 26/02/96

ORAL JUDGEMENT

1. The petitioner owned a property bearing Hissa No.9 i.e. Sub Plot No.13B of Final Plot No.911 of Town Planning Scheme No.3, Paldi, Ahmedabad. For the sale of this property he entered into an agreement to sale on 9.9.92 in favour of respondents Nos. 2 and 3 who are citizens of India. After other formalities, the sale deed was executed on 3.12.1992 and

was duly registered. Respondents Nos. 2 and 3 - the purchasers of the property - were inducted into possession of the property. By notification 15.2.1993, the area at which the property in question was situated was declared to be disturbed area for the period from 1.2.1992 to 31.10.1993 under Section 3 of the Gujarat Prohibition of Transfer of Immovable Property and Provision for Protection of Tenants from Eviction from Premises in Disturbed Areas Act, 1991. As a result of this declaration, the sale transaction in question automatically became null and void under subsection (1) of Section 4 of the Act, unless it could be saved under the provisions of subsections (2) and (3) of Section 4. The petitioner applied for a declaration that the transfer of immovable property made by her was made with her free consent and that the transfer was for a fair market value of the immovable property so transferred. The Collector arrived at conclusion that transfer of the said immovable property was made with free consent of the transferor and transferee and for a fair value of immovable property in question, yet rejected the application, on the ground of public interest. The order was affirmed in appeal by the appellate authority. Hence this petition.

2. The petitioner contends that once Collector had reached the conclusion that the transfer of the property in question was made by free consent of the transferor and the transferee and was for a fair value of the property in question, he had no authority to reject the application on any ground whatsoever. Reference to the public interest is alien to the whole scheme of the Act. Learned Assistant Government Pleader joins issue on this score and contends that as the predominated object of the Act is to safe guard public interest, the Collector was competent to reject the application for saving the transfer from being nullity on the ground of public interest, notwithstanding the finding about free consent and fair market value having been recorded in favour of the applicant. It is apposite to reproduce Section 4 of the Act.

4(1) Notwithstanding anything contained in any other law for the time being in force but subject to subsections (2) and (3) all transfers of immovable property situated in a disturbed area made during the specified period shall be null and void, with effect from the date of such transfer."

(2)(a) Any transferor or transferee in relation to a transfer of immovable property affected by the provisions of subsection (1) may, within the prescribed period and in the prescribed form, make an application to the Collector for a declaration that

the transfer of immovable property was made by free consent of the transferor and the transferee and for a fair value of the immovable property so transferred.

(b) On receipt of such application, the Collector shall hold a formal inquiry in the manner prescribed by the Bombay Land Revenue Code, 1879, and after giving an opportunity to the transferor and the transferee to be heard and after considering any evidence produced, decide whether the transfer of immovable property was made by free consent of the transferor and the transferee and for a fair value of the immovable property and accordingly -

(i) reject the application; or

(ii) by an order in writing make a declaration that the transfer of the immovable property was made by free consent of the transferor and the transferee and for a fair value of the immovable property so transferred.

(3) Upon a declaration made under subclause (ii) of clause (b) of subsection (2) in respect of any transfer of immovable property, such transfer of immovable property shall, with effect from the date of such transfer, be deemed to be valid for the purposes of this Act.

Explanation - For the purposes of this section and section 5, the word "transfer" in relation to an immovable property means a transfer by way of sale, gift, exchange, lease or otherwise and includes allowing the possession of such property to be taken or retained in part performance of contract of the nature referred to in section 53A of the Transfer of Property Act, 1882."

3. The perusal of the aforesaid provision on its plain reading lead to no other conclusion that the declaration of nullity in respect of transfers which have taken place during the period when area was declared to be disturbed area does not survive in the case of transfers which have taken place with free consent of transferor and transferee for fair value thereof. The object of the provision apparently is to safeguard the interest of the owner and occupant of the property against panic sales on account of disturbances in the riot stricken area. Subsection (1) declares all transfers of immovable property situated in disturbed area null and void with effect from the date of such transfer but such declaration is subject to the provisions of subsection (2) and (3) of Section 4. Clause (a) of subsection (2) permits the

transfer or transferee of the effected property to make an application to the Collector 'for a declaration that transfer of immovable property was made by free consent of the transferor or transferee and for a value of the immovable property in question.' The application is required to be made specifically for declaration in these two respects. Under clause (b) of subsection (2), the Collector is required to make an enquiry whether the transfer of immovable property was made by free consent of the transferor and the transferee and for a fair value of the immovable property in question, that is to say, he has to enquire into facts which is required to be applied for through an application under clause (a) of subsection (2). After holding an enquiry and reaching his conclusion on the question on which he is required to hold an enquiry, he is authorized to reject the application or make the declaration sought through the application. Obviously, rejection of application has to be made if the Collector finds against the applicant in respect of free consent or fair market value as consideration. But if he finds on the two issues for which application is required to be made and for which he is required to hold an enquiry, he has to record his finding by way of declaration under subclause (ii) of clause (b) of subsection (2). The job of the Collector comes to an end so soon he records a finding in respect of the two facts required to be investigated under clause (b) of subsection (2). The effect of such declaration is provided by statute under subsection (3) which states in no uncertain terms that upon a declaration made under subclause (ii) of clause (b) of subsection (2) in respect of any transfer of immovable property, such transfer of immovable property shall with effect from the date of such transfer be deemed to be valid for the purposes of this Act. It is not left to the Collector to enquire into matters other than those in respect of which an application is required to be made and in respect of which he is to make enquiry and then make an order in consonance with his findings after enquiry and to infructuate the operation of subsection (3) notwithstanding his findings recorded on the matters mentioned in subsection (2)(a) and (b).

4. Therefore, in my opinion, once the Collector had reached the conclusion that the transfer of the property was with free consent of the transferor and transferee and it was for a fair consideration of value of the property on the date of transfer he was not left with any jurisdiction to reject the application but was under an obligation to make such declaration under subclause (2) of clause (b) of Subsection (2). There is no specific form of such declaration. Having reached these findings on these two aspects, the consequence automatically shall take effect in terms of subsection (3). The Collector as well as the appellate authority, therefore,

in my opinion, have acted without jurisdiction in rejecting the application in spite of their finding in positive as the facts mentioned in clause (a) and (b) of subsection (2) on the grounds which is not required to be investigated under the application required to be moved under subsection (2)(a) of Section 4.

5. The petition accordingly succeeds. The impugned order to the extent it records rejection of the application is quashed and the effect of subsection (3) will take effect in terms of the findings recorded by the Collector as well as the appellate authority. Rule made absolute. There shall be no order as to costs.

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